

FEDERAL ENERGY REGULATORY
COMMISSION
888 First Street, N.E.
Washington, D.C. 20426,

Plaintiff,

V.

Case No. 1:02CV01625

CALIFORNIA INDEPENDENT SYSTEM)
 OPERATOR CORPORATION
 151 Blue Ravine Road
 Folsom, CA 95630,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff Federal Energy Regulatory Commission, for its complaint against the California Independent System Operator Corporation, states as follows:

SUBJECT MATTER JURISDICTION, PERSONAL JURISDICTION, VENUE

1. This Court has subject matter jurisdiction under 28 U.S.C. § 1331(b); Federal Power Act § § 314(a) and (b), 16 U.S.C. § § 825m(a) and (b); Federal Power Act § § 315(a) and (b), 16 U.S.C. § § 825n(a) and (b); and Federal Power Act § 317, 16 U.S.C. § 825p.

2. This Court has personal jurisdiction over the defendant under D.C. Code § § 13-423(a)(1), (a)(4) and (b).

3. Venue is proper in this Court under 28 U.S.C. § 1391(b) and Federal Power Act § 314(a) and (b), 16 U.S.C. § 825m(a) and (b).

4. The relief requested is authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201; and Federal Power Act § § 314(a) and (b), 16 U.S.C. § § 825m(a) and (b); Federal Power Act § § 315(a) and (b), 16 U.S.C. § § 825n(a); and Federal Power Act § 317, 16 U.S.C. § 825p.

PARTIES

5. Plaintiff Federal Energy Regulatory Commission ("Commission" or "FERC") is an independent federal regulatory commission within the Department of Energy. 42 U.S.C. § 7171. The Commission's principal place of business is in the District of Columbia.

6. Defendant California Independent System Operator Corporation ("CAISO"), a public utility as that term is defined in § 201(e) of the Federal Power Act ("FPA"), 16 U.S.C. § 824(e), operates a transmission system that transmits electric energy in interstate commerce. As a public utility, the CAISO is subject to FERC's exclusive jurisdiction over its transmission of electric energy in interstate commerce. The CAISO's principal place of business is in Folsom, California.

7. CAISO transacts business and engages in a persistent course of conduct in the District of Columbia through its agent, the District of Columbia law firm of Swidler Berlin Shereff Friedman, LLP ("the D.C. law firm"), whose office is located at 3000 K Street, NW, Suite 300, Washington, D.C. 20007. FERC does not restrict representation before it to members of the District of Columbia bar. Throughout the past several years, the D.C. law firm has represented CAISO before the courts and FERC, including the submission of numerous

filings concerning matters generally related to independent system operators ("ISO"), as well as on CAISO-specific matters, such as governance.

8. CAISO also transacts business and engages in a persistent course of conduct in the District of Columbia through an office it maintains in Washington, D.C., located at 3000 K Street, NW, Suite 300, Washington, D.C. 20007. From that office, another CAISO agent, Terri E. Moreland, transacts business on CAISO's behalf, *inter alia*, to obtain necessary FERC authorization for CAISO actions.

9. Upon information and belief, CAISO has engaged in regular and persistent communications with its District of Columbia agents, including meetings in the District of Columbia and California, between CAISO representatives and its agents, as well as mailed correspondence, telephone calls, and e-mails between CAISO and its D.C. agents regarding matters that are the subject of this complaint.

10. The above-mentioned contacts with the District of Columbia give rise to the claims identified in this complaint and establish that this Court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice.

ADMINISTRATIVE AND PROCEDURAL HISTORY

Development of Regional Transmission Organizations, Including ISOs

11. Historically, vertically integrated public utilities sold generation, transmission and electric distribution services as part of a bundled package. Significant technological advances and changes in the law increased entry into the wholesale electric power generation markets in recent years, and created a need for greater access to transmission services. FERC

found, however, that vertically integrated public utilities were using their monopoly control over interstate transmission facilities to gain advantage over potential competitors, and thus stymy competition.

12. To remedy this situation, FERC Order No. 888¹ fundamentally altered the wholesale electric power market, requiring all jurisdictional public utilities to unbundle wholesale electric power services and to file open access non-discriminatory transmission tariffs. Order No. 888 did not require utility participation in ISOs, but the Commission encouraged ISO formation as a means to provide transmission services separate from sales of electric energy, and set forth principles that would govern assessment of ISO proposals:

- ISOs would be public utilities subject to FERC jurisdiction. Under FPA § 201(e), a "public utility" is any person who owns or operates facilities used for the transmission of energy in interstate commerce or the sale of electric energy at wholesale in interstate commerce. Because an ISO would operate facilities used for the transmission of electric energy in interstate commerce, it is a

¹*Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996)("Order No. 888"), *clarified*, 76 FERC ¶ 61,009 and 76 FERC ¶ 61,347 (1996), *on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *clarified*, 79 FERC ¶ 61,182 (1997), *on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998); *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996)("Order No. 889"), *on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049 (1997), *on reh'g*, Order No. 889-B, 81 FERC ¶ 61,253 (1997), *aff'd in part, remanded in part*, *Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub. nom*, *New York v. FERC*, ___ U.S. ___, 122 S.Ct. 1012 (2002).

public utility, and therefore its operating standards and procedures, among other things, must be approved by the Commission.

- To assure the ISO will not favor any class of transmission users, the ISO must be independent of any individual market participant or any one class of participants (*e.g.*, transmission owners or end-users) and its rules of governance should prevent control, and the appearance of control, of decision-making by any class of participants.

13. Following Order No. 888, virtually all transmission-owning public utilities filed open access tariffs. Power resources were acquired over increasingly large regional areas, and interregional transfers of electricity increased. Other industry-wide changes included: divestiture by many integrated utilities of some or all of their generating assets; significantly increased merger activity between utilities; increased numbers of new participants in the form of both power marketers and generators as well as independent power exchanges; increases in the volume of trade, particularly sales by marketers; State efforts to introduce retail competition; and, new and different uses of the transmission grid.

14. These developments placed new stresses on existing transmission systems. Following an industry-wide consultative process, FERC Order No. 2000 ² concluded that transmission-related impediments were hindering a fully competitive wholesale electric

²*Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd*, *Public Utility Dist. No. 1 of Snohomish County v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

market, and that regional transmission organizations ("RTOs") could eliminate undue discrimination in transmission services. The Commission also found that RTOs could provide substantial benefits, including improved grid efficiency, reliability, and market performance. The Commission therefore required all public utilities that own, operate or control interstate transmission facilities either to file a proposal to participate in an RTO or to describe their efforts toward joining one. To assure non-discriminatory access to the transmission grid, the Commission established minimum characteristics for an RTO, including the "bedrock" principle that each RTO should be independent from market participants.

California's Restructuring

15. In September 1996, the California legislature enacted AB 1890 to restructure the California electric industry. Among other things, AB 1890 mandated the creation of the CAISO and a Power Exchange ("PX") by January 1998, and the creation of the California Electricity Oversight Board ("Oversight Board") with members appointed by the Governor and legislature. Under the proposed restructuring, the CAISO would operate a single, state-wide transmission grid, and the PX would facilitate creation of a transparent, visible spot market for electric generation. These structural changes were designed to facilitate open access for retail customers to purchase generation services from any supplier.

16. To implement this restructuring program, on April 29, 1996, California's three largest investor-owned utilities, which are subject to FERC's jurisdiction as public utilities under FPA § 201(e), filed a joint application with FERC to transfer control of certain transmission facilities to the CAISO and to sell electricity to the PX. The applicant public

utilities, the California Legislature, the California Commission and the other parties all recognized that the CAISO and PX would be public utilities subject to FERC jurisdiction under the FPA.

17. The parties proposed that the CAISO and PX would be governed by boards composed of California residents selected to represent various stakeholder classes (*i.e.*, transmission owners, municipal entities, sellers, end-users, *etc.*), with each class having a specified number of voting representatives. An Oversight Board was proposed: (1) to establish nominating/qualification procedures for the ISO and PX Governing Boards, to determine the composition of Board representation, and to select Board members both initially (start-up function) and in the future; and (2) to serve as a permanent appeal board for reviewing ISO Governing Board decisions.

18. The Commission conditionally granted the applications on a preliminary basis, approving the proposed Governing Boards, finding them consistent with the ISO principles of Order No. 888, except for the proposed California residency requirement which was unduly discriminatory and would discourage participation in the ISO by out-of-state entities. *Pacific Gas & Electric Co., et al.*, 77 FERC ¶ 61,204 (1996). The Commission approved the start-up function for the Oversight Board, but rejected any permanent role for the Oversight Board in the governance or operations of the CAISO because those matters are within FERC's primary jurisdiction. Further, the proposed Oversight Board conflicted with the ISO independence principles expressed in Order No. 888.

19. In 1999, the Oversight Board sought the Commission's advance approval of a bill pending before the California Senate, SB 96, which made several changes to the California restructuring law. Whereas formerly the Oversight Board was authorized to appoint all members to the ISO and PX stakeholder boards, SB 96 gave it only veto power over certain categories of proposed board members. The requirement that members of the ISO and PX boards be California residents was changed to a requirement that they be electricity customers in the area served by the ISO or PX. Whereas formerly the Oversight Board was to have very broad appellate jurisdiction, SB 96 confined its jurisdiction to matters outside FERC's authority pertaining to retail electric service or sales.

20. The Commission found that SB 96 properly limited the Oversight Board's role to issues outside the scope of FERC's jurisdiction, *i.e.* matters involving the retail electricity market in California. *California Electricity Oversight Board*, 88 FERC ¶ 61,172 (1999), *reh'g denied*, 89 FERC ¶ 61,134 (1999).

Events Concerning the CAISO Board Following the Summer of 2000

21. Beginning in the summer of 2000, the California bulk wholesale market experienced serious dysfunctions and pricing abnormalities. Following its investigation into those difficulties, the Commission proposed in *San Diego Gas & Electric Company, et al.*, 93 FERC ¶ 61,121 (2000) ("November 1 Order"), specific remedies to correct identified flaws. One flaw was the ineffectiveness of the ISO Governing Board in reaching decisions, due both to its inability to reach consensus on important issues and the undue pressure from various sources that made it susceptible to influence by market participants, including the State

of California, creating conflicts of interest. The Commission found that, unless the CAISO Board was able to resolve matters in a timely manner and independent of market participants, the Commission could not be assured that the rates, terms and conditions of the CAISO's jurisdictional services would be just and reasonable, and not unduly discriminatory or preferential as required by FPA § § 205 and 206, 16 U.S.C. § § 824d and 824e. To remedy this situation, the Commission proposed replacing the Board with an independent, non-stakeholder Board within 90 days. Under the proposed transition mechanism, the CAISO's chief executive officer ("CEO") would select an independent consultant, who would, in turn, prepare a slate of candidates from which the new non-stakeholder Board would be selected. The Commission specified that the Board should include members with experience in corporate leadership, professional expertise in either finance, accounting, engineering or utility law and regulation, and experience in the operation and planning of transmission systems.

22. *San Diego Gas & Elec. Co., et al.*, 93 FERC ¶ 61,294 (2000) ("December 15 Order"), addressed comments regarding the process of transition to a new, non-stakeholder CAISO Board. The Commission found that the State of California could have an appropriate role in board selection if the independence of board members could be assured, and therefore proposed further on-the-record procedures to discuss with state representatives the selection of the new non-stakeholder board members. Existing CAISO Board members were required on January 29, 2001 to turn over decision-making power and operating control to the ISO management, but were permitted to continue functioning as members of a stakeholder advisory

committee. If no consensus were reached regarding selecting a new board within 90 days of the December 15 Order, the procedures proposed in the November 1 Order would apply.

23. The on-the-record meeting between FERC and the state representatives did not occur because, on January 18, 2001, the California legislature passed a statute (ABX1 5) that replaced the existing CAISO Board with a five-member Board appointed by the Governor, subject only to confirmation by the Oversight Board. The law stated that new Board members should not be affiliated with actual or potential market participants, and purported to give the Board authority to determine what filings the CAISO could submit to FERC. The law also precluded CAISO's entry into a multistate entity or a regional organization organized under FERC's Order No. 2000 initiative to create RTOs unless approved by the Oversight Board.

24. The Governor nominated five California residents to the Board: the California Secretary of Business, Transportation, and Housing; a senior advisor to the Governor; an attorney with the Utility Reform Network; an attorney with a California law firm, who was also a former chair of the Oversight Board; and the president of the Silicon Valley Manufacturing Group.

25. On January 23, 2001, the Oversight Board confirmed the Governor's nominees. That same day, the California Attorney General filed suit to compel the 26 stakeholder members of the then-existing Board to resign immediately. Those stakeholder members resigned on January 25, 2001, and the five individuals selected by the Governor assumed control of the Board. The Governor subsequently signed an executive order (E.O. D-23-01)

that directed the new Board to revise certain provisions of the CAISO tariff filed with FERC to reflect the above-described changes.

26. On January 17, 2001, the Governor issued an emergency proclamation giving the California Department of Water Resources (DWR) (a department of State government reporting directly to the Governor), authority to purchase power. DWR is now the largest purchaser of energy in the California wholesale electricity market.

27. On April 26, 2001, the Commission issued *San Diego Gas & Electric Company, et al.*, 95 FERC ¶ 61,115 (2000), conditioning prospective price mitigation for the CAISO's markets on the CAISO and the California investor-owned utilities filing an RTO proposal by June 1, 2001. These parties filed an RTO proposal on June 1, 2001.

28. In response to a Commission directive, the CAISO on May 1, 2002 filed a Comprehensive Market Redesign Proposal ("MD02") to address deficiencies in the CAISO market design. In *California Independent System Operator Corp.*, 100 FERC ¶ 61,060 (2002) (the "MD02 Order"), the Commission accepted, rejected and modified in part the MD02 proposal. The Commission found that, *inter alia*, the problems of the last two years with the dysfunctional California wholesale market and extremely high prices during certain time periods was due, in part, to California's reliance on imports for 20 percent of its energy, with very little new bulk transmission being built to assure access to such imports. With overall Western loads growing and Arizona, Nevada and New Mexico facing very low reserve margins, California cannot continue to rely on imports to ensure reliability and low electric prices. To correct this situation, a number of long-term structural reforms are required to

maintain sufficient incentives to sell into California and to build the generation and transmission facilities necessary to provide reliable service in the future. Among those structural reforms is the establishment of an independent, non-stakeholder CAISO Board.

FERC's July 17, 2002 Order

29. In *Mirant Delta, LLC, et al. v. California Independent System Operator Corp.*, 100 FERC ¶ 61,059 (July 17, 2002) ("July 17 Order"), the Commission found that the CAISO Board, as currently constituted, poses a barrier to implementation of the MD02 market redesign, and that the composition of the current Board conflicts with the December 15 Order and Order Nos. 888 and 2000. The following problems with the current Board were enumerated in the July 17 Order.

30. Since passage of ABX1 5, under which all Board members are selected by the Governor and serve at his pleasure, the CAISO decision-making process has been heavily influenced, if not completely dictated, by the State, who through DWR, is the largest purchaser of electricity in California. Unless the CAISO is independent of market participants, the Commission could not be assured that the rates, terms or conditions of the CAISO's jurisdictional service will be just, reasonable, and not unduly discriminatory or preferential. Further, because the CAISO is central to the functioning of wholesale electric power markets in the West, State control impedes creation of a well-functioning Western energy market because it makes it difficult, if not impossible, to develop infrastructure needed to maintain

just and reasonable prices. *See* recently issued GAO Report No. 02-427 (finding that state control of CAISO has resulted in the impression that CAISO will favor DWR and not treat market participants equally). Further, the CAISO Board has not appeared inclined to address long-term issues. The Commission concluded that even the perception that CAISO, which controls transmission of electricity in interstate commerce, is biased can be enough to prevent proper market forces from working in that market. Here, the perception of bias is compounded by the fact that the State is, through DWR, itself a market participant.

31. S t a t e

control of the CAISO Board also raises jurisdictional issues because the CAISO is a public utility subject to the Commission's exclusive FPA jurisdiction for CAISO's transmission service in interstate commerce. Under the FPA, public utilities are required to comply with the Commission's directives. Pervasive control over a public utility by the State conflicts with the Commission's exclusive jurisdiction.

32. State control of the CAISO Board conflicts with the independence requirements for ISOs under Order Nos. 888 and 2000, as well as with the December 15 Order regarding CAISO. Control of the CAISO by one State, particularly where, as here, the State is a market participant, threatens the CAISO's ability to treat in-state and out-of-state transmission users on a non-discriminatory basis as required by the FPA's non-discrimination provisions.

33. The current CAISO Board also violates the December 15 Order requirement that the Board consist of non-stakeholders because two members are associated with organizations (Utility Reform Network and Silicon Valley Manufacturing Group) that represent end-user stakeholders.

34. The current Board violates the Commission's requirement that Board members have appropriate expertise in corporate leadership, professional expertise in either finance, accounting, engineering or utility law and regulation and experience in the operation and planning of transmission systems. The current Board members have no prior utility experience in the operation and planning of transmission systems.

35. Based on these enumerated inadequacies of the Board under federal law, the July 17 Order directed that by January 1, 2003, the current Board must be replaced with an expert, non-stakeholder Board composed of nine voting members who are independent of market participants. To effectuate this goal, the Commission ordered CAISO to take certain steps:

- By August 15, 2002, the CAISO must file with the Commission a list of the six ISO member-classes (generators and marketers; transmission owners; transmission dependent utilities; public interest groups; alternative energy providers; and end-users and retail energy providers), and the stakeholders within each class.
- By August 30, 2002, the CAISO must file with the Commission a list of the name and affiliation of each of the six representatives of the Board Selection Committee (BSC) from each member-class.
- By September 13, 2002, the CAISO must file its selection of a nationally recognized executive search firm, chosen by BSC majority vote, to provide candidates for each open Board seat to be voted upon by the BSC. In selecting these candidates, the firm will generate a set of

qualifications similar to those used to select the boards at the other ISOs and consistent with those outlined in the November 1 Order.

- By September 30, 2002, the CAISO must file with the Commission revised bylaws reflecting the governance structure and board selection process ordered.
- By January 1, 2003, in addition to seating a non-stakeholder board, the CEO of the CAISO must form a stakeholder advisory committee (SAC) from all stakeholders, other than the State and its agencies, to provide advice to the Board and serve as a focal point for dissemination of information. The SAC will not be entitled to vote on any issues. Additionally, the CEO must form a separate advisory committee, composed only of the Oversight Board, that will serve as the State's and its agencies' representative in advising the Board.

Subsequent Events

36. On August 6, 2002, California Governor Gray Davis wrote to the members of the CAISO Board, asserting that by its July 17, 2002 Order, FERC was "attempting nothing short of a federal takeover of the California ISO," and that FERC wants the Board to "violate state law by changing the structure of your Board." *See* Exhibit 1 hereto at 1-2. The Governor urged the Board to "resist" FERC's "illegitimate" "power grab." *Id.* at 2.

37. On August 6, 2002, Bill Lockyer, the Attorney General for the State of California, wrote to the President of the CAISO (who is not a member of the Board), copying

the CAISO Board, asserting the ISO could not comply with the July 17 Order without violating California law. *See* Exhibit 2 hereto, at 1. The Attorney General opined that the July 17 Order exceeded "any possible jurisdiction FERC has under the Federal Power Act," and that "there is no legal authority to permit FERC to dictate the governance of a corporation organized under state law." *Id.* at 2. Moreover, the Attorney General explained, should CAISO comply with FERC's order, he will "act to uphold and enforce the existing provisions of California state law relating to the ISO's governance." *Id.* at 1. The Attorney General "urged" CAISO "to seek the advice of its counsel in this matter, keeping in mind [his] resolve to uphold and enforce California law by all available legal means." *Id.* at 3.

38. On August 7, 2002, the CAISO Board passed a resolution regarding FERC's July 17 Order based on "advice from counsel on available options under these circumstances." Exhibit 3 hereto. That resolution directs the CAISO Management *not* to take any actions required by the July 17 Order in preparation for making any changes to the California ISO Board until further direction from the CAISO Board or its designee. *Id.* at 1.

39. On August 13, 2002, the CAISO's D.C. law firm filed with the Commission a Request for Rehearing and Motion for Stay of the July 17 Order. *See* Exhibit 4 hereto. In that pleading the CAISO acknowledges, through its D.C. law firm, that the CAISO is a "public utility" as defined in FPA § 201. *Id.* at 6. The CAISO further acknowledges, through its D.C. law firm, that the stakeholder-based ISO Board that the Commission ordered disbanded in the November 1 and December 15 Orders "could not effectively address the developing electricity crisis in California." *Id.* at 8. Nevertheless, the CAISO asserts, through its D.C. law firm, that

it cannot comply with the Commission's July 17 Order. *Id.* at 5. According to CAISO, through its D.C. law firm, it cannot comply with the July 17 Order because compliance would create a "clear conflict with corporate requirements and state law" and would "expose the ISO to enforcement actions against the ISO, its officers and directors, including exposure to criminal prosecution under Sections 2210 and 2211 of the California Public Utilities Code." *Id.* at 33. The request further states that the "Attorney General of California has stated that *any action* by the ISO to comply with the July 17 Order would violate state law, and has pledged to enforce California law and take legal action." *Id.* (emphasis in original).

CAUSE OF ACTION

40. Plaintiff realleges paragraphs 1 through 39 as if they were restated in their entirety.

41. FPA § 201(b)(1), 16 U.S.C. § 824(b)(1), states, in pertinent part: "The provisions of this Part shall apply to the transmission of electric energy in interstate commerce The Commission shall have jurisdiction over all facilities for such transmission"

42. FPA § 206(a), 16 U.S.C. § 824e(a), states: "(a) Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charges, or classification demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable

rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order."

43. CAISO is a "public utility" under FPA § 201(e) that provides transmission of electric energy in interstate commerce subject to the exclusive jurisdiction of the Commission under the FPA. As such, all rules, regulations, practices or contracts of CAISO affecting its rates, charges, or classifications for such service are subject to the exclusive jurisdiction of the Commission under the FPA, and may be changed by the Commission consistent with the requirements of FPA § 206.

44. To prevent undue discrimination in the transmission of electric energy, the Commission, through Order No. 888, established as one governing principle for the creation of ISOs, such as CAISO, that each ISO must be independent in its governance from influence by any individual market participant or from any class of market participants.

45. From its initial orders regarding the creation and operation of CAISO through the present, the Commission has sought to maintain the independence of the CAISO Board. In response to FERC criticisms of the original CAISO Board, the California Legislature passed SB 96, which limited the Board's authority to retail matters outside FERC jurisdiction and contained other provisions designed to accommodate federal control over CAISO's transmission service.

46. In reviewing structural problems with the California electricity markets in the latter half of 2000, the Commission determined, among other things, that the CAISO Board was ineffective due to its inability to reach consensus on important issues and to the undue

influence asserted over its members by various parties. To remedy this problem, the Commission ordered creation of a non-stakeholder Board, and required that the new Board include members with corporate leadership roles or professional expertise in either finance, accounting, engineering or utility and regulation as well as experience in the operation and planning of transmission systems.

47. Prior to seating of the FERC-mandated board, the California Legislature passed ABX1 5 to replace the then-existing CAISO Board with a purportedly non-stakeholder Board whose members would be appointed by the Governor. The bill also gave the new board authority to determine what tariff filings regarding CAISO's interstate transmission service would be submitted to FERC. Finally, the bill prohibited CAISO from joining a regional transmission organization, contrary to FERC's efforts to encourage creation of RTOs as a further means of avoiding undue discrimination in the interstate transmission of electric energy.

48. The Governor appointed five Californians, at least two of whom are associated with end-user stakeholders, to the ABX1 5 replacement Board prior to the expiration of the then-existing CAISO Board's term. The Attorney General of California threatened the existing CAISO Board members with litigation if they did not immediately resign their positions to make way for the Governor-appointed board to be seated. Shortly thereafter, the Governor, through an executive order (E.O. D-23-01), directed changes to CAISO's tariff to reflect the new Board. During the same time period, the Governor, through an emergency proclamation,

gave a state agency reporting directly to him, DWR, authority to purchase power to be used in the State.

49. FERC's July 17 Order found that the five-member appointed Board creates a barrier to redesigning the interstate electricity markets in California and the surrounding Western States so as to prevent undue discrimination and to assure just and reasonable rates for customers in those States. The Board's composition of only California members, particularly now that the State, through DWR, is the largest purchaser in the California interstate electricity markets, raises concerns that CAISO would provide unduly discriminatory transmission service in interstate commerce. Creation of the Board also raised an obstacle to achieving the long-term federal goals of increasing needed generation and transmission infrastructure and of maintaining just and reasonable rates throughout the region by precluding the CAISO from joining an RTO that would serve States besides California.

50. The Board's composition violates FERC's non-stakeholder requirement for an ISO board and frustrates achievement of federal goals either by acting in, or creating the impression that it is acting in, a biased manner. The Board's composition also violates the requirements of earlier FERC orders regarding the level and scope of expertise in public utility matters and the operation and planning of transmission systems that must be represented on the Board.

51. To remedy these problems, the July 17 Order directed CAISO to undertake a series of steps that will result in the creation of an independent non-stakeholder Board by January 1, 2003.

52. On August 7, 2002, the CAISO Board, in response to August 6 letters from the Governor and the Attorney General (Exhibits 1 and 2 hereto), and upon advice from its counsel, passed a resolution directing CAISO not to take any action to replace the current Board as mandated by the July 17 Order until further direction from the Board or its designee. Exhibit 3.

53. A pleading by CAISO's D.C. law firm informed the Commission that CAISO would not comply with the July 17 Order's directives. CAISO did not file with FERC a list of the six ISO member-classes and the stakeholders within each class by August 15, 2002, as required by the July 17 Order.

54. Based on its past conduct, passage of the August 7 resolution, its D.C. law firm's representation to the Commission, and its failure to meet the specified August 15 deadline, it appears that CAISO has engaged in or is about to engage in acts or practices that constitute or will constitute violation of the FPA and FERC orders issued thereunder.

55. As described in paragraphs 29-39, inclusive, as well as elsewhere in this complaint, CAISO willfully and knowingly engaged in or is about to engage in conduct that violates or will violate the FPA and FERC orders issued thereunder, or willfully and knowingly has omitted or failed to do acts, matters or things required to be done by the FPA and FERC orders issued thereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief and judgment:

1. A judgment from this Court declaring that:

- a) the governance provisions of the CAISO tariff for transmission service in interstate commerce falls within the exclusive jurisdiction of the Commission under the FPA;
- b) the creation, composition, and continued operation of the current CAISO Board under the alleged auspices of California state law is unlawful under the FPA and FERC orders issued thereunder;
- c) failure to comply with the requirements of FERC's July 17 Order for replacing the current CAISO Board does and will constitute willful and knowing violations of the FPA and the July 17 Order by CAISO;
- d) failure to comply with the requirements of FERC's July 17 Order for replacing the current CAISO Board will subject CAISO to the penalties specified in FPA § 316(b).

2. An order from this Court mandating that CAISO comply immediately with the requirements of the July 17 Order for replacing the current CAISO Board.

3. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

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